



REAL ESTATE IN REGARD TO THE JAMMU AND KASHMIR REORGANIZATION ACT, 2019

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ABSTRACT

The repeal of Articles 370 and 35(A) has led some to assume that progress and economic nirvana are not far off in the future for the region that Jahangir properly dubbed "Heaven on Earth." The opening up of non-agricultural land for acquisition by non-residents of the state is one of the key reasons for this belief. The truth, however, is rather different. Is the Jammu and Kashmir Reorganisation Act, 2019 the key to unlocking Pandora's box? Who you ask is the determining factor. This article addresses the following question: What are the concerns and problems confronting Jammu and Kashmir, as well as the most efficient use of its land? The research examines different topics via a legal lens, projecting their future ramifications, as well as the events that led to the passage of the Jammu and Kashmir Reorganisation Act and the sale of land to outsiders. Due to topographical and socio-political issues, real estate in Jammu and Kashmir has had slow growth. It is impossible to predict if the legislation will result in a change in this industry. It is preferable to wait until the haze surrounding the new law dissipates before accepting the offer to purchase land. Various aspects of the decision are explored, including the legal and historical context, the function of RERA, blowback from people of the surrounding region, the politics involved, and the way the Act was enforced by a Presidential decree, creating ethical and legal questions.

KEYWORDS: Reorganisation Act, Real Estate, RERA, Jammu and Kashmir.

INTRODUCTION:

The real estate sector has advanced to close the gap during the last decade, emerging as the fastest-growing market. Its rapid growth is better explained by rapid urbanisation and growing income levels. Residential, office, commercial real estate, and industry areas have all seen an increase in infrastructure development throughout the years.

Previously, it was estimated that commercial real estate will contribute roughly 11% of India's GDP by 2020, making it a market worth \$180 billion. It might reach a market size of \$1 trillion in 2030 if current trends continue. However, in the current context, a weak market, decreased sales volume, and delayed projects are causing a decline.

The real estate industry is not as well-functioning as one might think. On multiple fronts, it is stumbling. Realtors, purchasers, and the government are all having problems as a result of the lack of adherence to the laws, rules, and regulations. Furthermore, the administration took an extraordinary step in 2019.

On August 5, 2019, the Jammu and Kashmir Reorganisation Act made history by abolishing Article 370 and Article 35(A). While Article 370 awarded Jammu and Kashmir unique status³, Article 35(A) had previously barred non-residents of the state from investing in real estate and obtaining land⁴. Article 35A was inserted to the Indian constitution by a Presidential order issued under Article 370, the Constitution (Application to Jammu and Kashmir) Order, 1954.

Article 370 established the constitution of the then-state of J&K. From having its own flag to the freedom to enact laws, it empowered and gave sovereignty to the state. Even though several laws were implemented in the state as well as the rest of the country, it was only done with the approval of the state government, with the exception of certain issues like as foreign affairs, defence, and communications, which were left to the central government. While Article 35A granted people of Jammu and Kashmir a special privilege, it is also unique in that it does not appear in the main body of the constitution. In fact, it is followed by Article 36, which is found in Appendix I. 35A establishes the definition of "permanent residents" in the state of Jammu and Kashmir, as well as the specific rights and advantages bestowed upon them.

With the introduction of the Jammu and Kashmir Reorganisation Act, 2019, the situation has gotten more complicated. By repealing Articles 370 and 35A, the citizens of J&K lost their special status and were forced to compete with the rest of India in the law-making process.

From now on, the terms of the 1882 Transfer of Property Act shall apply across India. The Transfer of Property Act, 1977 was theoretically pre-existing, but it was subject to the state's own regulations on the transfer of immovable property. The Act of 1977 will continue to regulate the two Union territories, with the exception of Section 139, which will be removed. The defunct Section of 139 guaranteed the ability of various communities to own property and enjoy J&K's resources, barring citizens from alienating these riches to outsiders.

The State Administration Council approved the Jammu and Kashmir Real Estate

(Regulation and Development) Act in December 2018, which established the Real Estate Regulatory Authority. The Jammu and Kashmir Reorganisation Act, 2019, removed the regulatory law shortly after the Centre partitioned the state into two Union Territories. As a result, the Real Estate Regulatory Authority was never established.

Phone and internet services had been unavailable for more than a month. Mehbooba Mufti, the president of the People's Democratic Party, was taken into prison and house arrested at the Hari Niwas guest house. Omar Abdullah, the leader of the National Conference, was also detained, along with a few other prominent political figures. India's army and air force have been placed on maximum alert. According to reports, 8,000 CRPF men were airlifted to Kashmir.

PARADISE ON EARTH BECKONS PROPERTY BUYERS:

Property costs in Jammu, Srinagar, and Baramulla range from Rs 2,200 to Rs 4,000 per square foot, much less than in tier two and tier three towns. The low prices, according to ten real estate experts, are an inducement for people who want to invest. The Indian real estate market is experiencing a downturn.

There is now an opportunity to watch a surge in investment in the mountainous and serene terrain, which may lead to a surge in investment. Commercial real estate that is now undervalued could rise in value, boosting the country's economy. Due to topographical issues and unstable socio-political events, the real estate sector has had slow expansion up until now. Infrastructural development is urgently needed in sectors such as hospitality, tourism, and entertainment, which may attract tourism and investment prospects in the near future.

Women's property inheritance rights, which were previously revoked when they married an outsider, have now been restored. The woman's estate can be legally passed on to their children. The state's substantial reliance on tourism cannot adequately compensate for the declining employment rate. A spark from the industrial sector could contribute to the economy's growth and open up new possibilities.

Nirmal Singh, a BJP leader, said the Union government will offer a domicile-like option for the Union territory, guaranteeing that residents' interests are maintained by prohibiting outsiders from purchasing agricultural land. The bill, he noted, is a push to entice migrants to return to the Valley.

Despite the fact that a bright future may lie ahead, investors and real estate developers are exercising care before dipping their toes into the real estate market, as it may be too early to anticipate what lies behind Pandora's box. To make a profit before investing in this sector, which has been in trouble in the state for years, a pragmatic strategy is required.

People all around the country began inquiring about land availability as soon as the act was approved, according to the chairman of Frutech Infrastructure Private Limited, but they were still waiting for the fog surrounding the new law to settle before proceeding with transactions.

Large tracts of land in Samba and Kathua, both of which have a large Hindu popu-

lation, could be attractive to outsiders, and exploitation could occur in the near future. Another rich location is the stretch of land that runs from Jammu to Akhnor, which is located on the Chenab River's banks.

As an incentive for dealing and escalating transfers of native lands, he continued, real estate dealers may risk animosity, reaction from militants, and anonymity from their community. Real estate agents are caught in the middle of the government and society. It is their responsibility to follow the new land law, yet doing so would set them against their own people.

ROLE OF REAL ESTATE REGULATORY AUTHORITY:

RERA stands for Real Estate Regulatory Authority, which was established in 2016 with the passage of the Real Estate (Regulation and Development) Act. The President of India gave his assent to the Act on March 25, 2016, and it went into effect on May 1, 2016. Only 52 of the 92 parts were notified at the time of its inception, and 69 of the 92 sections were notified by notification from the Ministry of Housing and Urban Poverty Alleviation (HUPA). The remaining provisions went into effect in May 2017.

Indian real estate was a perplexing and unregulated sector before the RERA act was enacted. The fundamental reason for this was that there was no detailed legislation governing the real estate industry. With the implementation of RERA, all realtors and builders are required to register with their respective state authorities, implying that they must act within the authority's legal framework and scope.

The Act covered the entire country at the time of its induction, with the exception of the state of Jammu and Kashmir¹³. However, following the repeal of Article 370, the Union Territory of Jammu and Kashmir has notified the implementation of the Real Estate (Regulation and Development) Act, paving the way for property development in the two regions. Its primary goal is to safeguard buyers' interests, ensure transparency among citizens investing in real estate, combat money laundering and black marketing, and boost the business.

IMPACT OF COVID-19:

The impact of Covid-19 can be felt in practically every industry, with real estate being no exception. When the J&K Reorganisation Act was passed, the pandemic was just around the corner. Due to a major breakout of the virus and ongoing lockdown, people have been suffering at their current positions. They would wait for the situation in their immediate surroundings to calm down before venturing into unfamiliar territory in Jammu and Kashmir.

The pandemic is wreaking havoc on developers who are just getting their feet wet in the real estate industry. The number of distressed properties is increasing as the number of coronavirus infections rises for the second time. RERA, as the final nail in the coffin, provides no assistance while making project completion difficult. With 75 percent of the funds deposited with the escrow as required by the RERA Act¹⁵, the builders are unable to move their funds to other ventures or initiate new projects, which is prohibited, thereby inviting the responsible authorities to revoke their licence.

AGRICULTURAL LAND AS A BONE OF CONTENTION:

The two UTs agreed to comply with the Real Estate (Regulation and Development) Act, 2016, in August 2020. Property buying and selling, which was formerly restricted to citizens, is now open to the general public. It was previously illegal for a non-resident of J&K to invest in immovable property. Non-residents, however, do not have free reign under the J&K Reorganisation Act of 2019, as agricultural land cannot be utilised for non-agricultural purposes¹⁶. However, this notion is false; a district collector has the authority to change the use of agricultural property to non-agricultural uses. Land that was previously unavailable to industrialists will now be exploited. In the name of state development, industries would exploit prominent natural resources.

LACK OF SECURITY:

Real Estate Industry is more of a sentiment-driven industry; thus security environment is a big concern without which no real-estate venture could work. Investors want political stability in J&K, without which it just has a novelty value and is not a very lucrative market otherwise. Commercial and residential real estate firms will not want to invest until there is political stability in the state. Situations of real estate in Jammu are still preferable vis-a-vis Kashmir, because of which Jammu will get a new lease of life.

LEASH ON INNOVATION:

The Central Laws enactment restricts the builder's ability to innovate and modernise. For example, a realtor might come up with an architectural design for a little play-safe clubhouse for kids, complete with air filters for a virus-free environment or a specialised meditation centre for mental calm. RERA, in any case, discourages this. Because new plans take longer to finalise, the developer may be subjected to a significant penalty.

CONCLUSION:

The Jammu and Kashmir Reorganisation Act is undemocratic, unconstitutional, and backward-looking, with the sole purpose of disempowering the people of Jammu and Kashmir and changing the demographics. The introduction of the

Reorganisation Act resulted in the status of a number of laws being lowered, with some being abolished and others being changed.

The Big Land Estate Abolition Act of 1950, the Jammu and Kashmir Tenancy Act of 1980, the Jammu and Kashmir Common Lands (Regulation) Act of 1956, the J&K Land Revenue Act of 1996, the Agrarian Reforms Act of 1976, and the J&K Land Grants Act of 1960, as well as the J&K Development Act of 1970, are included on the list.

The Centre should have sought approval from the state government of J&K before amending any state law, however the state legislative assembly was reduced to a minority after its dissolution in 2018, resulting in the imposition of President's rule. The federal government merely had to request the Governor's assent to remove Article 370 and Article 35A and propose the Jammu and Kashmir Reorganisation Act a year later, believing it to be the most advantageous time. The Centre did not seek a referendum because the state assembly had been stripped of its powers, giving them unrestricted ability to turn the J&K constitution upside down. "This decision was perfectly within the powers of government, constitutionally sound, and no legal or constitutional error can be found in it," according to several legal experts. An expert, on the other hand, argued that "it was an illegal decision, equivalent to fraud, that may be contested at the Supreme Court."

It's too early to predict how real estate demand in Jammu and Kashmir will develop because the region remains volatile due to socio-political tensions and militant groups. Before proceeding with the transaction, buyers would observe the relevant issues affecting the land. The real estate momentum may first assist the hospitality industry, which is in desperate need of growth, while residential real estate may have a hesitant start. It will be difficult to pace the real estate sector until the government assures maximum safety. Security was tightened in the area shortly after the legislation was passed, demonstrating the public's scepticism of the government. Kashmir is enduring a decades-long insurgency, and Pakistan's manoeuvres along the Line of Control and the Radcliffe Line are proving dangerous.

Price increases are only projected in Jammu and Kashmir, as well as sections of Baramulla, if demand increases, which could only happen if the government implements contingency programmes to encourage purchasers to make investments.

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